Filed 6/8/17 P. v. Cantrell CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GREGORY ERIK CANTRELL, Defendant and Appellant.	B261192 (Los Angeles County Super. Ct. No. 4PH07727)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline H. Lewis, Judge. Modified and, as modified, affirmed.

Quinn Law and Stephane Quinn for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Yun K. Lee and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

After serving time in prison for sex offenses against a child under the age of 14, defendant and appellant Gregory Cantrell was released on parole subject to various conditions, including that he not enter or loiter within 250 feet of the perimeter of places where children congregate, such as a daycare center. He was found to have violated that condition when he attended bible study at a church having a daycare center. Cantrell appeals, contending, among other things, that this and other parole conditions are unconstitutionally overbroad and vague and that his procedural due process rights were violated because he did not receive a timely arraignment and probable cause hearing. Although we reject his contentions, we modify some parole conditions. We affirm the order as modified.

BACKGROUND

In April 2011, Cantrell was convicted of three counts of lewd or lascivious act with a child under the age of 14.[1] (Pen. Code, § 288, subd. (a).)[2] He was sentenced to three years in prison. Cantrell was paroled in June 2013. In April 2014, he acknowledged his special parole conditions, including:

- Condition 12, requiring Cantrell to "waive psychotherapist-patient privilege, and agree to polygraph examinations while on parole supervision." (§ 3008, subd. (d)(4).)

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[1] The facts underlying that conviction are not part of the record on appeal, but the crimes were committed in 2003 and 2004.

[2] All further undesignated statutory references are to the Penal Code.

- Condition 18, prohibiting Cantrell from entering or loitering "within 250 Feet of the perimeter of places where children congregate; i.e., day care centers, schools, parks, playgrounds, video arcades, swimming pools, state fairgrounds, county fairgrounds, etc."
- Condition 29, prohibiting "travel more than 50 miles from your residence of record."
- Condition 35, providing, "You shall not obtain employment that allows you to enter a residence where a stranger resides."
- Condition 107, prohibiting Cantrell from entering any state park or state beach and not allowing him on any bike path or bike trail. "Parolee is not allowed in any city or county designate[d] park or wilderness park." (§ 3053.8.)
- Requiring Cantrell to waive his Fifth Amendment right against self-incrimination. (§ 3008, subd. (d)(3).)

Cantrell was arrested on October 27, 2014 for violating the terms of his parole, specifically, condition 18. On November 6, 2014, a petition to revoke parole was filed. The next day, November 7, parole was preliminarily revoked. Arraignment and plea were set for November 10, 14 days after arrest. At the November 10 arraignment, Cantrell moved to have the case dismissed on the ground his right to a speedy arraignment was violated, under *Williams v. Superior Court* (2014) 230 Cal.App.4th 636 (*Williams*), which had been filed a month earlier and which held that an arraignment must be held no later than 10 days after arrest. The court felt it wasn't obligated to

follow *Williams* because "the decision [wa]s not final." Cantrell also asked that his probable cause hearing be held no later than 15 days following his arrest, in compliance with section 3044. The court said there was "no way" to comply with the 15-day period, as it had expired,[3] and set the probable cause hearing for November 19, 2014.

On November 19, 2014, the probable cause hearing was held.[4] Parole Agent Byron Bluem testified that he supervised Cantrell. On October 23, 2014, Bluem received a call from Reverend Robert Paul of Bel Air Presbyterian Church, where Cantrell attended adult group meetings on Sundays. The reverend was concerned about Cantrell's "inappropriate contact and comments with some females." Bluem went to the church, which had a daycare center and children's youth groups within 250 feet of the church. Based on tracking data from Cantrell's GPS device, Cantrell was at church on Sundays and weekdays, when children were present. The court found probable cause to revoke parole and set the matter for a full revocation hearing.

At the December 5, 2014 revocation hearing, Cantrell objected to the commissioner and refused to stipulate to her. Relying on Government Code section 71622.5, the court found

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[3] In this, the court was incorrect. Fifteen days from October 27 was November 11.

[4] Cantrell also filed a motion challenging the constitutionality of conditions 12, 35, 29 and 107, and the requirement he waive his Fifth Amendment right against self-incrimination. The court did not consider the motion, which did not concern condition 18, on the ground that challenges to those conditions should be raised in a writ.

that it was acting as a "hearing officer" and not as a temporary judge, and therefore a stipulation was unnecessary.

Reverend Paul then testified that Bel Air Presbyterian consists of a main sanctuary and other buildings. Facilities designed for children exist throughout the property, from the sanctuary end where there are playgrounds and preschool facilities, to the other end where there is a teenage center and a building dedicated to children's classes and programs. Children of all ages are at the property from approximately 8:30 a.m. until midafternoon. Children are also on the property on any given Saturday. The daycare center, which is attended by preschool-aged children, operates Monday through Friday. It is located at the lower level of the church building. On Sundays, a preschool-age Sunday school meets from approximately 8:30 a.m. to 3:00 p.m. Older elementary school children meet on the upper campus. Also on Sunday mornings, programs for fifth through eighth graders are held. Typically, there are 300 to 350 children at church on Sundays.

The reverend conducts a religious study group, Deeper Roots, that meets twice on Sundays, at approximately 12:15 p.m. to 2:00 p.m. and from 7:15 p.m. to 9:00 p.m. The study group is held on the ground level of the church, inside, within 200 feet of where children would be. Reverend Paul saw Cantrell at the afternoon session at least twice, in September and October 2014. When Cantrell was at the group on October 16, children were in the area, and Cantrell went in and out of the room, once to take a phone call.

Although the reverend knew of no complaints about Cantrell or of allegations that Cantrell, instead of being at Sunday services, was elsewhere on church grounds, Cantrell's

"actions and comments in the class" caused the reverend to search the Marsy's law website and then to contact Agent Bluem.

Agent Bluem has supervised Cantrell since June 16, 2014. Even before Reverend Paul called about Cantrell, Bluem noticed, in July or August 2014, that Cantrell was going to Bel Air Presbyterian based on GPS tracking, and Bluem asked Cantrell if there were children present when Cantrell was there. Cantrell said he attended a men's bible study and that no children were present when he was there.[5] GPS tracking, however, showed that Cantrell seemed to be within 250 feet of the daycare center. When Bluem took Cantrell into custody, Cantrell reiterated, " 'I have never seen any kids when I went there.' " Bluem had not been informed of any allegations about Cantrell either "being inappropriate" or wandering the hallways of the church buildings.

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[5] Cantrell's GPS tracking showed he was at the church:
Sunday, September 7, 2014: 7:04 a.m. - 7:32 a.m.
Sunday, September 14, 2014: 6:39 a.m. - 7:36 a.m. and 11:14 a.m. - 12:44 p.m.
Sunday, September 21, 2014: 7:18 a.m. - 8:02 a.m. and 10:48 a.m. - 12:29 p.m.
Sunday, September 28, 2014: 7:27 a.m. - 8:02 a.m. and 10:55 a.m. - 11:49 a.m.
Sunday, October 5, 2014: 10:27 a.m. - 2:00 p.m.
Saturday, October 11, 2014: 1:23 p.m. - 1:46 p.m.
Sunday, October 12, 2014: 10:48 a.m. - 2:46 p.m.
Monday, October 13, 2014: 3:14 p.m. - 3:30 p.m.
Sunday, October 19, 2014: 10:30 a.m. - 1:14 p.m.
Friday, October 24, 2014: 6:51 a.m. - 7:03 a.m. and 1:04 p.m. - 1:08 p.m.

The court found that Cantrell violated condition 18. The court revoked and restored parole on the same terms and conditions with the modification that Cantrell spend 150 days in jail.

CONTENTIONS

Cantrell contends: **I.** his procedural due process rights were violated because he did not receive a timely arraignment and probable cause hearing, **II.** the trial court's orders are void because Cantrell did not stipulate to the commissioner, **III.** condition 18 is overbroad as applied, vague as applied, and there was insufficient evidence Cantrell willfully violated it, **IV.** other conditions of parole are unconstitutional, and **V.** certain statutory parole conditions are not retroactive and violate constitutional prohibitions against ex post facto laws.

DISCUSSION

I. Cantrell was not prejudiced by any delay in arraignment and the probable cause hearing.

A parolee is entitled to certain procedural due process protections before parole may be revoked. (*Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*); *In re La Croix* (1974) 12 Cal.3d 146, 152; *Williams*, *supra*, 230 Cal.App.4th at pp. 642-643.) Due process first requires "some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available." (*Morrissey*, at p. 485.) The purpose of this inquiry, akin to that at a preliminary hearing, is to "determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions." (*Ibid.*) Second, due process requires a final revocation hearing. (*Id.* at

pp. 487-488; *Williams*, at p. 648.) "This [final revocation] hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation." (*Morrissey*, at p. 488.) The parolee must have, among others, an opportunity to be heard and to present evidence, and this hearing "must be tendered within a reasonable time after the parolee is taken into custody." (*Ibid.*) Thus, according to *Morrissey* and *Williams*, a parolee arrested for a parole violation is entitled to a "prompt" probable cause hearing *and* to a final revocation hearing within a "reasonable time." (*Williams*, at p. 647.)[6] However, a "prompt unitary hearing" may suffice. (*Id.* at p. 656.)

Although *Morrissey* declined to specify time frames for these hearings, section 3044 provides that a parolee "shall be entitled to a probable cause hearing no later than 15 days" following arrest for violation of parole and to an evidentiary revocation hearing no later than 45 days after arrest. (§ 3044,

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[6] Currently on review in the California Supreme Court is whether, in light of changes made to the parole revocation process under the 2011 realignment legislation, "a parolee is entitled to a probable cause hearing conducted according to the procedures outlined" in *Morrissey* before parole can be revoked. (*People v. DeLeon* (2015) 241 Cal.App.4th 1059, review granted Feb. 3, 2016, S230906.) *DeLeon* disagreed with *Williams* and declined to require two parole revocation hearings or to set strict time limits in parole revocation proceedings. *DeLeon* instead found that the parole revocation scheme after realignment doesn't require trial courts to conduct the preliminary probable cause hearings described in *Morrissey* before revoking parole and that a timely single hearing procedure can suffice.

subd. (a)(1) & (2).) In addition, at least one Court of Appeal has found that a parolee is entitled to arraignment within 10 days of arrest for a parole violation. (*Williams*, *supra,* 230 Cal.App.4th at p. 643; see also *id.* at p. 661 [arraignment protects parolee's right to meaningful participation in probable cause hearing by ensuring timely access to counsel and to notice of the allegations against him or her "well before" the probable cause hearing so that parolee has time to prepare a defense]; see *In re Mitchell* (1961) 56 Cal.2d 667, 670; § 988.)

Cantrell's hearings did not comply with all of these time frames. He was arraigned 14 days after arrest, not the 10 days *Williams* suggested. The probable cause hearing was held 23 days after arrest, not the 15 days in section 3044, subdivision (a)(1).

Nonetheless, even if these time frames apply after realignment, we are not persuaded the delays prejudiced Cantrell. (See generally *In re La Croix*, *supra*, 12 Cal.3d at p. 154 [failure to comply with *Morrissey* subject to harmless error analysis under *Chapman v. California* (1967) 386 U.S. 18, 24].) The petitioner in *La Croix* was arrested for drunk driving and charged with violating his parole. A probable cause hearing compliant with *Morrissey* was never held, but the petitioner was convicted, pursuant to plea, of drunk driving. The failure to hold the prerevocation/probable cause hearing was harmless: "Due process does not require that a parolee benefit from such a denial, but only that no unfairness result therefrom. Accordingly, in the absence of evidence that the Authority is not making a good faith effort to comply with the mandates of *Morrissey* and our decisions in this respect, a parolee whose parole has been revoked after a properly conducted revocation hearing is not entitled to have the

revocation set aside unless it appears that the failure to accord him a prerevocation hearing resulted in prejudice to him *at the revocation hearing*." (*In re La Croix*, at p. 154, italics added; see *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1238.)

Similarly, any delay in arraignment and in holding the probable cause hearing did not prejudice Cantrell at his revocation hearing. Cantrell's revocation hearing was timely held within 45 days of his arrest. Counsel represented Cantrell at that hearing. Cantrell was given and took the opportunity to challenge the allegations in the revocation petition. (See generally *Morrissey*, *supra*, 408 U.S. at p. 488 [parolee must have opportunity to be heard and to show he did not violate parole conditions or to show circumstances in mitigation].) Witnesses were called and cross-examined. Cantrell makes no showing as to how he could have otherwise successfully challenged the fact of his violation of his parole condition had he received a timely arraignment and probable cause hearing.[7] In the absence of such a showing, any error is harmless beyond a reasonable doubt. (*In re La Croix*, *supra*, 12 Cal.3d at p. 155; *In re Moore* (1975) 45 Cal.App.3d 285, 294.)

II. The hearing officer was authorized to conduct the revocation proceedings without stipulation.

Cantrell next contends that the order revoking parole must be reversed because he did not stipulate to then Commissioner

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[7] Although we certainly do not equate such notification with formal arraignment, one or two days after his October 27, 2014 arrest, "J. Perez, PAI" informally notified Cantrell of the charges against him. Perez noted on the "notice and request for assistance during parole proceeding" form that Cantrell "refused to participate in parole proceeding."

Lewis to act as a temporary judge. As we explain, Cantrell's stipulation was unnecessary.

Section 3000.08, subdivision (a), provides that the "court" in the county in which the parolee is released, resides or in which an alleged violation of supervision has occurred shall hear petitions to revoke parole. "Court" is defined in section 1203.2, subdivision (f)(1), to mean a "judge, magistrate, or *revocation hearing officer described in Section 71622.5 of the Government Code*." (Italics added.) The Legislature enacted Government Code section 71622.5 to provide courts with the additional judicial hearing officers necessary to implement the Realignment Act.[8] (Gov. Code, § 71622.5, subd. (a).) Government Code section

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[8] Government Code section 71622.5 provides:

"(a) The Legislature hereby declares that due to the need to implement the 2011 Realignment Legislation addressing public safety (Chapter 15 of the Statutes of 2011), it is the intent of the Legislature to afford the courts the maximum flexibility to manage the caseload in the manner that is most appropriate to each court.

"(b) Notwithstanding Section 71622, the superior court of any county may appoint as many hearing officers as deemed necessary to conduct parole revocation hearings pursuant to Sections 3000.08 and 3000.09 of the Penal Code and to determine violations of conditions of postrelease supervision pursuant to Section 3455 of the Penal Code, and to perform related duties as authorized by the court. A hearing officer appointed pursuant to this section has the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law.

"(c)(1) A person is eligible to be appointed a hearing officer pursuant to this section if the person meets one of the following criteria:

71622.5, subdivision (b), thus authorizes the superior court to appoint judicial hearing officers to conduct parole revocation hearings.

Cantrell argues that Government Code section 71622.5 did not obviate the need for the parties to stipulate to Commissioner Lewis as a temporary judge. (See generally Code Civ. Proc., § 259, subd. (d); Cal. Const., art. VI, § 21 [parties' stipulation is required for a cause to be tried by a temporary judge].) But under article VI, section 22 of the California Constitution, the Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate

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"(A) He or she has been an active member of the State Bar of California for at least 10 years continuously prior to appointment.

"(B) He or she is or was a judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program.

"(C) He or she is or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.

"(2) The superior court may prescribe additional minimum qualifications for hearing officers appointed pursuant to this section and may prescribe mandatory training for those hearing officers in addition to any training and education that may be required as judges or employees of the superior court.

"(d) The manner of appointment of a hearing officer pursuant to this section and compensation to be paid to a hearing officer shall be determined by the court. That compensation is within the definition of 'court operations' pursuant to Section 77003 and California Rules of Court, rule 10.810.

"(e) The superior courts of two or more counties may appoint the same person as a hearing officer under this section."

judicial duties. Government Code section 71622.5, subdivision (b), thus gives a hearing officer appointed pursuant to that section "the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law." (Gov. Code, § 71622.5, subd. (b).) A hearing officer under Government Code section 71622.5 is therefore not a "temporary judge" to whom the stipulation requirements apply. (Couzens & Bigelow, *Felony Sentencing After Realignment* (May 2017) p. 127 https://www.courts.ca.gov/partners/documents/felony_sentencing.pdf [as of June 5, 2017] ["The stipulation of the parties specified by Code of Civil Procedure, section 259(d) is not required before a subordinate hearing officer may conduct revocation-related hearing."].)

III. Parole condition 18

Cantrell contends that parole condition 18 prohibiting him from entering or loitering within 250 feet of the perimeter of places such as daycare centers where "children congregate" was constitutionally overbroad and vague as applied, and there was insufficient evidence to show he willfully violated the condition.

A. *Overbreadth, as applied*

The purpose of parole is to reintegrate the offender "into society and to positive citizenship." (§ 3000, subd. (a)(1); see also *Morrissey*, *supra*, 408 U.S. at p. 477; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233.) Although parolees have fewer constitutional rights than "ordinary persons" (*Stevens*, at p. 1233), parole conditions "must be reasonable since parolees retain 'constitutional protection against arbitrary [and] oppressive official action' " and conditions must be "reasonably related to the compelling state interest of fostering a law-abiding lifestyle in the parolee" (*id.* at p. 1234; see also *People v. Keller*

(1978) 76 Cal.App.3d 827, 838, disapproved on other grounds by *People v. Welch* (1993) 5 Cal.4th 228, 237). Thus, a condition of parole will not be invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct that is not reasonably related to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486, superseded on other grounds as stated in *People v. Wheeler* (1992) 4 Cal.4th 284, 290-291.)

"An as-applied challenge contemplates analysis of the facts of a particular case to determine the circumstances the condition has been applied and whether, in light of those circumstances, the application deprived the defendant of a protected right." (*People v. Mitchell* (2012) 209 Cal.App.4th 1364, 1378.) Where the challenge to a parole condition is one of constitutional overbreadth, the "essential question" "is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153; see also *In re Sheena K.* (2007) 40 Cal.4th 875, 890 [probation condition that imposes limitations on person's constitutional rights must closely tailor those limitations to the purpose of the condition].)

Cantrell argues there is not a close fit between barring him from facilities primarily frequented by children and the burden of "barring him from attending church altogether at Bel Air Presbyterian, because of a daycare operating in the church's basement." He suggests that a church is not like a daycare center in that a church "is generally primarily attended by adults and it is not a logical place to find unsupervised young children."

As much as we might disagree with this suggestion—to the contrary, a church is exactly the type of place one would expect to find unsupervised children—this misses the point. Condition 18 did not prohibit Cantrell from attending church. Condition 18 prohibited him from being within 250 feet of the daycare center, which happened to be located at Bel Air Presbyterian, and from being at places children congregate. True, as applied, the condition prohibited Cantrell from worshipping at this church at the times he chose primarily to frequent it, i.e., Sunday mornings and afternoons, perhaps the busiest day and times at the church. Cantrell, however, cites no authority and makes no showing that he has a constitutional right to worship either at Bel Air Presbyterian in general or at Bel Air Presbyterian at the specific time and day he chose to attend the study group. Indeed, Deeper Roots also meets Sunday evenings, from 7:15 p.m. to 9:00 p.m. Although we make no determination whether Cantrell could attend that session without violating the terms of his parole, this underscores Cantrell's failure to show that condition 18 bars him from attending Bel Air Presbyterian altogether, much less from exercising his religion in general.

B. *Vagueness, as applied*

Cantrell also contends that condition 18 is vague as applied. Underlying such a challenge is the due process concept of "fair warning." (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890; see also *People v. Barajas* (2011) 198 Cal.App.4th 748, 754.) "Fair warning" prevents arbitrary law enforcement and provides adequate notice. (*In re Sheena K.*, at p. 890; *Barajas*, at pp. 754-755.) Mathematical certainty is not required; rather a parole condition must be sufficiently precise for the parolee to know what is required of him or her, and for the court to determine

whether the condition has been violated. (*In re Sheena K.*, at p. 890; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1117.)

The imprecision in condition 18, Cantrell argues, lies in its failure to include a knowledge requirement, i.e., he may not enter or loiter near a place *he knows or should reasonably know* is frequented by children. Condition 18, however, gives concrete and clear examples of places children congregate: "day care centers, schools, parks, playgrounds, video arcades, swimming pools, state fairgrounds, county fairgrounds, etc." Where, as here, examples of places to which the restriction applies are given, a condition barring a probationer from "places where minor children congregate" is not overbroad or ambiguous. (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 878-879.)

Nor do we agree that the condition is constitutionally infirm because Cantrell could violate the law, for example, merely by driving past Bel Air Presbyterian, if his path took him within 250 feet of the daycare center. Stated otherwise, momentarily merely putting a foot into that 250 feet perimeter would constitute an "entrance" and be a violation. That is an unreasonable interpretation of the condition. A condition should be given the meaning that would appear to a reasonable, objective reader. (*People v. Olguin* (2008) 45 Cal.4th 375, 382; *People v. Forrest* (2015) 237 Cal.App.4th 1074, 1080-1082 [rejecting vagueness challenge to probation conditions, because no reasonable person would construe them in unconstitutional manner].) Indeed, Agent Bluem testified that Cantrell was permitted to go where he needed to "sustain [his] life." He can, for example, enter Target without violating condition 18. He simply cannot loiter in the toy or children's section of Target.

Although we doubt that condition 18 could reasonably be interpreted in the manner Cantrell suggest, we nonetheless modify it as follows: "You shall not enter the perimeter of places where you know or reasonably should know children congregate or loiter within 250 feet of the perimeter of places where you know or reasonably should know children congregate; i.e., day care centers, schools, parks, playgrounds, video arcades, swimming pools, state fairgrounds, county fairgrounds, etc." (See *People v. Moses* (2011) 199 Cal.App.4th 374, 377 [modifying similar condition to include knowledge requirement].)

C. *There was sufficient evidence that Cantrell willfully violated parole*

Although the condition did not contain an express knowledge requirement, we reject Cantrell's argument that the trial court violated him without regard to his knowledge or intent. In reaching its conclusion that Cantrell violated condition 18, the court cited Agent Bluem's testimony that Cantrell denied seeing children at the church. The court found it "[n]ot believable that he did not see children everywhere. And clearly he was not being truthful with the parole officer, and therefore knew he wasn't supposed to be there." The court therefore considered defendant's knowledge. (See *People ex rel. Gallo v. Acuna*, *supra*, 14 Cal.4th at p. 1117.)

Moreover, there was more than sufficient evidence to support the court's finding that Cantrell knew that children congregated at Bel Air Presbyterian at the times he was there and that there was a daycare center on the grounds. Cantrell was at the church at times other than when Deeper Roots met. On at least one Sunday when his study group met, children were on the outside patio. Also, the church has numerous programs

and activities for children of all ages—from preschoolers to teenagers—located throughout church grounds. Despite the ubiquity of children at the church, Cantrell denied seeing them. From this evidence, the court could reasonably infer Cantrell knew that children congregated at Bel Air Presbyterian. (*People v. Gipson* (2013) 213 Cal.App.4th 1523, 1528 [inferences may constitute substantial evidence].)

IV. Remaining parole conditions

Cantrell challenges other parole conditions on the grounds they are unconstitutionally overbroad and vague. We consider each in turn.

A. *Condition 35*

Parole condition 35 prohibits Cantrell from obtaining employment that allows him to "enter a residence where a stranger resides." Cantrell contends that the condition is unconstitutionally overbroad and vague because it includes *all* strangers, adults and children, and because it imposes restrictions on his "property" rights in that it prevents him from running his carpet cleaning business.

To the extent Cantrell challenges this condition on the ground it limits his employment opportunities, a court may impose a condition of parole that impinges on the defendant's scope of employment. (*People v. Lewis* (1978) 77 Cal.App.3d 455; *People v. Keefer* (1973) 35 Cal.App.3d 156.) Although Cantrell complains that the condition prevents him from operating his carpet cleaning business, he has made no showing that his business requires him to enter only residences, as opposed to, for example, commercial offices. In any event, in the absence of information about the circumstances underlying Cantrell's crimes (see generally *In re Sheena K.*, *supra*, 40 Cal.4th at p. 887 [in

some cases, a constitutional defect may be correctable only by examining factual findings in the record or remanding to the trial court for further findings]), we cannot evaluate whether the condition is unrelated to the crimes for which he was convicted or to future criminality (*People v. Lent*, *supra*, 15 Cal.3d at p. 486).

Even so, we agree that the condition is overbroad in that it refers to "strangers." Cantrell's parole conditions are designed to prevent him from being around children. To that end, we modify the condition to prevent Cantrell from obtaining employment that allows him to enter a residence where he knows or reasonably should know a "minor" resides.

B. *Condition 29*

Condition 29 prohibits Cantrell from travelling more than 50 miles from his residence of record. "Although not explicitly guaranteed in the United States Constitution, '[t]he right to travel, or right of migration, now is seen as an aspect of personal liberty which, when united with the right to travel, requires "that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." ' " (*People v. Moran* (2016) 1 Cal.5th 398, 405; see also *In re White* (1979) 97 Cal.App.3d 141, 148.) Even so, reasonable and incidental restrictions on the movement of criminal offenders released back into society may be placed. (*Moran*, at p. 406.) Here, however, the record is inadequate to assess whether the travel restriction is reasonable and incidental to Cantrell's movement. (See generally *In re Sheena K.*, *supra*, 40 Cal.4th at p. 887.) Cantrell does not, for example, establish that the travel restriction impacts his employment. (See, e.g., *People v. Smith* (2007) 152 Cal.App.4th 1245.) In any event, condition 29 is modified by

condition 3 which prohibits Cantrell from travelling more than 50 miles from his residence "without the prior approval of your parole agent." Because Cantrell may seek approval from his parole agent to travel outside the 50 mile limit, there is no blanket restriction on Cantrell's travel rights.

C. *Condition 107*

We similarly conclude that, without knowing the circumstances of Cantrell's underlying offense, we cannot adequately evaluate Cantrell's challenges to this parole condition. Indeed, the record shows that Cantrell violated an earlier version of this condition, and it was amended to preclude him from being on bike paths. Given the state of this record, we cannot find that the condition is overbroad.

D. *Waiver of privilege against self-incrimination and of psychotherapist-patient privilege*

Parole condition 12 requires Cantrell to waive his psychotherapist-patient privilege and agree to polygraph examinations. His conditions of parole also require him to waive his Fifth Amendment right against self-incrimination. Our California Supreme Court recently upheld these conditions in the context of probation.[9] (*People v. Garcia* (2017) 2 Cal.5th 792 (*Garcia*).) Cantrell concedes that his challenges to these conditions are moot.

V. Retroactivity

Cantrell was convicted in November 2010 of crimes committed between December 2003 and December 2004. He

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[9] The probation conditions *Garcia* considered are identical to Cantrell's parole conditions, and both are required under The Chelsea King Predator Prevention Act of 2010 (Chelsea's Law). (Stats. 2010, ch. 219, § 28.)

therefore contends that the parole conditions under section 3008, enacted in 2010, do not apply retroactively to him. Section 3008, however, was amended in 2014 to include an express retroactivity provision: "Persons placed on parole on or after July 1, 2012, shall successfully complete a sex offender management program, following the standards developed pursuant to Section 9003, as a condition of parole. The length of the period in the program shall be not less than one year, up to the entire period of parole, as determined by the certified sex offender management professional in consultation with the parole officer and as approved by the court. Participation in this program applies to every person described without regard to when his or her crime or crimes were committed." (§ 3008, subd. (d)(2).) The parole conditions Cantrell challenges apply to him, as he was placed on parole in 2013.

Cantrell, however, also claims that the parole conditions are impermissible under federal and state ex post facto laws. (U.S. Const., art. I, § 10, cl. 1; Cal. Const., art. I, § 9.) The ex post facto clause of the United States Constitution prohibits retrospective legislation that increases the punishment for a crime subsequent to its commission.[10] (*People v. Delgado* (2006) 140 Cal.App.4th 1157, 1164-1166.) But a change in the law that simply operates to the disadvantage of the defendant or constitutes a burden is not necessarily unlawful under the ex post facto prohibition. (*Collins v. Youngblood* (1990) 497 U.S. 37, 50.) "The standard for determining whether a law violates the ex

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[10] We apply federal constitutional analysis in determining whether a law violates the California Constitution analog. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 295.)

post facto clause has two components, 'a law must be retroactive—that is, "it must apply to events occurring before its enactment"—and it "must disadvantage the offender affected by it" . . . by altering the definition of criminal conduct or increasing the punishment for the crime . . . .' " (*Delgado*, at p. 1164.)

The parole conditions in section 3008 do not increase defendant's "punishment." Section 3008 does not, for example, increase the length of his parole time. Rather, the length of time a parolee is in the sex offender treatment program is for not less than one year, and up to the entire period of parole. (§ 3008, subd. (d)(2).) Moreover, as *Garcia* emphasized, the parole conditions were based on findings that sex offender specific treatment reduces recidivism. (*Garcia*, *supra*, 2 Cal.5th at p. 800.) Requirements that a sex offender waive his or her Fifth Amendment and psychotherapist-patient privileges, for example, are an integral part of that treatment, known as the Containment Model. (*Id.* at p. 801.) The "containment team" must "obtain accurate information about the offender's prior victims, the offender's access to potential new victims, and the high-risk behavior unique to that sex offender—especially when that history includes categories of victims or types of behavior stretching beyond the crimes of conviction." (*Ibid.*) That the sex offender "be complete and accurate" about his or her sexual history is imperative; hence, the waiver requirements. We therefore conclude that the parole conditions do not punish Cantrell for past crimes. Rather, they are designed to reduce recidivism and to protect the public.

DISPOSITION

Condition 18 is modified as follows: "You shall not enter the perimeter of places where you know or reasonably should know children congregate or loiter within 250 feet of the perimeter of places where you know or reasonably should know children congregate; i.e., day care centers, schools, parks, playgrounds, video arcades, swimming pools, state fairgrounds, county fairgrounds, etc."

Condition 35 is modified as follows: "You shall not obtain employment that allows you to enter a residence where you know or reasonably should know a minor resides."

As modified, the order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.